

New Jersey Division on Civil Rights



Director's Orders Compendium

2002

CIVIL RIGHTS

JAMES E. MCGREEVEY
Governor

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Welcome to the NJ Division on Civil Rights Director's Orders Compendium for Calendar Year 2002.

In an effort to more fully inform you of some of the Division's actions, initiatives and other activities, Assistant Director Gary LoCassio has prepared this overview of all the Director's Orders from the past 12 months.

The following pages illustrate how the Division on Civil Rights has worked to further the directives and positive efforts of Governor James E. McGreevey and Attorney General Peter C. Harvey in combating unlawful discrimination in this State.

I hope you find this review both interesting and informative.

J. Frank Vespa-Papaleo

Director

New Jersey Division on Civil Rights

KAMLESH H. DAVE v. CAMDEN COUNTY MUNICIPAL UTILITIES AUTHORITY

Complainant filed a verified complaint with the Division alleging that Respondent terminated him based on his national origin (Indian) in violation of the LAD. Following an administrative hearing, the ALJ issued an initial decision recommending that the complaint be dismissed. Without making a specific determination regarding whether Complainant established a prima facie case of unlawful discharge, the ALJ concluded that Respondent presented good faith reasons for selecting Complainant for layoff, and that his assertions that Respondent had a discriminatory motive were not credible.

standards for evaluating discriminatory discharge cases and concluded that Complainant did not present sufficient evidence to refute Respondent's legitimate non-discriminatory reason that it relied on seniority to select Complainant for layoff. In addition, Complainant did not present sufficient evidence to support the conclusion that Respondent terminated Complainant because of his national origin or as part of a plan to target others for layoff in violation of the LAD. For these reasons, the Director adopted the ALJ's initial decision dismissing the complaint.

DCR Docket No.:
ED80NK-45415**OAL Docket No.:**
CRT 830-01**D.O. Issued:**
July 2002

In reviewing the ALJ's recommended decision, the Director applied the McDonnell Douglas

**DAVID BRONNER v. WW TENDERCARE ENTERPRISES NURSING, INC.,
AND ALEYAMMA P. JOSEPH**

Complainant filed a verified complaint alleging that Respondents engaged in unlawful discrimination by refusing to hire him as a certified home health aide because of his sexual orientation (homosexual) and disability (HIV positive), in violation of the LAD. The ALJ issued an initial decision concluding that Complainant produced sufficient evidence to establish that Respondents rescinded their offer of employment upon receipt of information that he was a homosexual and that he tested positive for HIV and hepatitis. Respondents failed to participate in the hearing or file exceptions to the initial decision.

The Director conducted an independent review of the record and found sufficient evidence to adopt the ALJ's decision. The Director awarded Complainant back pay with interest and compensation for his pain and humiliation. In addition, the Director assessed the maximum statutory penalty. Finally, as a prevailing party Complainant submitted an application for attorney's fees which the Director granted in a supplemental order.

DCR Docket No.:
EL11WB-42243-E**OAL Docket No.:**
CRT 8121-98**D.O. Issued:**
July 2002

CHRISTOPHER CROCE v. CENDANT MORTGAGE CORPORATION

Complainant filed a verified complaint alleging that Respondent refused to hire him because of his age (48), in violation of the LAD. Complainant applied for employment with Respondent as a mortgage and customer service representative. He was interviewed for both positions, but was not selected. In response to Respondent's motion for summary decision, the ALJ issued an initial decision dismissing the complaint based on his determination that the undisputed facts established that Respondent denied Complainant employment for legitimate non-discriminatory reasons. The ALJ relied on the testimony of the two employees who interviewed Complainant for the mortgage sales position who testified that Complainant

provided inadequate responses to questions and that he was not a prime candidate. With regard to the customer service position, the ALJ determined that it was undisputed that Complainant expressed during his interview that his true interest in obtaining the customer service position was to eventually obtain a mortgage sales position. Based upon this evidence, the ALJ concluded that Respondent had legitimate business reasons for rejecting Complainant's application.

The Director found that the ALJ properly granted Respondent's motion for summary decision and adopted the ALJ's decision dismissing the complaint.

DCR Docket No.:
EC24AB-45004-E**OAL Docket No.:**
CRT 00831**D.O. Issued:**
July 2002**EGBERT REID v. SHOPRITE**

Complainant filed a verified complaint with the Division alleging that Respondent refused to hire him because of his race (Black) and national origin (Jamaican), in violation of the LAD. Following an administrative hearing, the ALJ issued an initial decision dismissing the verified complaint after concluding that Complainant failed to prove that Respondent acted with discriminatory intent. The ALJ determined that Respondent's witnesses testified credibly that their decisions regarding Complainant's application for employment were not based on his race or national origin. This included testimony by two witnesses that Respondent's policy is to accept all

applications whether or not there is an available position, and to keep applications on file for future reference. The ALJ also found that Respondent demonstrated that it maintains a racially diverse workforce. For these reasons, the ALJ concluded that Respondent did not refuse to hire Complainant because of his race or national origin, and in fact offered him a position when one became available.

Relying on the ALJ's credibility determinations, the Director adopted the ALJ's initial decision dismissing the complaint.

DCR Docket No.:
EB54WB-44790**OAL Docket No.:**
CRT 10260-00**D.O. Issued:**
July 2002

ASTON FOSTER v. SOMERSET MEDICAL CENTER

Complainant filed a verified complaint alleging that his employer discharged him from his position of housekeeping aide because of his national origin (Jamaican) and disability (shoulder & back injuries), in violation of the LAD. Following an administrative hearing, the ALJ issued an initial decision recommending that the complaint be dismissed. Although the ALJ found that Complainant established a prima facie case of unlawful discharge, she also found that he failed to prove that Respondent's explanation for his discharge (four work-related infractions) were a pretext for unlawful discrimination. In addition to accepting as true Respondent's non-discriminatory reasons for terminating Complainant's employment, the ALJ further found that Complainant was not on light duty

assignment or any other restriction with regard to his job duties, when he received disciplinary action for failure to perform certain duties. Furthermore, the ALJ found that there was no evidence that Complainant's infractions were related to his disability. Finally, the ALJ did not credit Complainant's allegations that Respondent's supervisors had an animosity toward Jamaicans, since Complainant produced no witnesses to corroborate this charge and his testimony on this issue was unpersuasive.

Relying on the ALJ's credibility determinations relative to the parties and their witnesses, the Director adopted the ALJ's initial decision dismissing the complaint.

DCR Docket No.:
ET18WB-42159-E**OAL Docket No.:**
CRT 1212-01**D.O. Issued:**
August 2002**KENNETH T. TUCKER v. GLEN RIDGE BOARD OF EDUCATION**

Complainant filed two verified complaints with the Division alleging that Respondent subjected him to differential treatment and terminated his employment based on his race (Black), disability (bulging disc) and as an unlawful reprisal, all in violation of the LAD. Following an extensive administrative hearing, the ALJ issued an initial decision recommending that the complaints be dismissed. First, the ALJ concluded that Complainant did not produce any direct evidence of unlawful discrimination, such as express statements by decision makers that unequivocally revealed that their decisions were motivated by Complainant's race or his status as a person with a disability. Secondly, the ALJ determined that Complainant failed to establish with

indirect or circumstantial evidence that Respondent was motivated by considerations of race, disability, or assertion of rights protected under the LAD when it terminated his employment. Third, the ALJ did not find any credible support in the record for Complainant's allegation that Respondent subjected him to differential treatment in assignments, transfer or discipline as compared to co-workers based on unlawful considerations of his race, disability or activity protected by the LAD.

Relying on the ALJ's credibility determinations regarding Complainant's job performance and insubordination, the Director found good cause to adopt the ALJ's initial decision dismissing the complaints.

DCR Docket No.:
EG08WE-35545-E;
EG08WE-37410-E**OAL Docket No.:**
CRT 10575-97**D.O. Issued:**
August 2002

**MARGARET ALLEN v. PRINCE SPORTS GROUP, INC.
STEPHANIE MELTON v. PRINCE SPORTS GROUP, INC.**

Complainants filed individual verified complaints alleging that throughout their terms as temporary workers, Respondent refused to offer them permanent positions and subsequently terminated their employment because of their race. Additionally, Complainants charged that Respondent subjected them and three other Black workers to hostile work environment racial harassment. An administrative hearing was commenced and Respondent moved to dismiss the charges following the close of Complainants' evidence. The ALJ granted Respondent's motion and issued an initial decision dismissing the complaints.

The ALJ concluded that the alleged harassing conduct, involving a supervisor's use of a racial slur over the loudspeaker when referring to Complainants, occurred after the supervisor had advised them that their employment was terminated. The ALJ concluded that Complainants could not have reasonably perceived Respondent's conduct as altering their work environment because the incident occurred outside the employer-employee relationship and was not covered by the LAD.

The Acting Director rejected this conclusion and determined instead that the record revealed sufficient evidence of a material factual dispute regarding Complainants' relationship to Respondent at the time of the alleged harassment that precluded summary dismissal. Specifically, the record revealed evidence that Complainants were instructed to remain on the premises and work the remainder of their shift despite being terminated. Moreover, the Director noted that in some circumstances the LAD's prohibitions against employment discrimination and reprisal apply to non-employees, such as applicants or former employees. Accordingly, the Director determined that there was a material factual dispute regarding whether Respondent's conduct altered the terms, conditions and privileges of Complainants' employment, in violation of the LAD. Therefore, the Director found good cause to reject the initial decision granting Respondent's motion to dismiss the complaints and remanded the matter for further proceedings to determine whether the events occurred as described in Complainants' testimony.

DCR Docket No.:
EC03RB-38041;**OAL Docket No.:**
CRT 00760-00S;**D.O. Issued:**
August 2002**RODNEY B. DAWSON v. R.W. VOGEL, INC., HOLGATE PROPERTY ASSOCIATION, ENVIRONMENTALLY CLEAN NATURALLY, INC. AND JEFF VOGEL**

The Director adopted the conclusion reached by the ALJ that Respondents subjected Complainant to a racially hostile work environment because he is African-American. The Director also adopted the ALJ's conclusion that Complainant's race was a determinative factor in Respondents' decision to terminate his employment as a truck driver. Accordingly, the Director adopted the ALJ's recommended award for emotional distress damages and agreed that Complainant suffered no compensable lost income as a result of Respondents' violations of the LAD.

The Director modified the ALJ's assessment of statutory penalties in light of a recent LAD amendment which increased the maximum permissible penalties, and made an individualized assessment of the penalties to be imposed on each Respondent based on the gravity, duration and nature of each of Respondents' LAD violations.

Respondents appealed, and the Appellate Division affirmed the Director's finding of a hostile environment and award of damages, and reversed the Director's finding of discriminatory discharge.

DCR Docket No.:
EQ11RB-41666-E**OAL Docket No.:**
CRT 4501-00**D.O. Issued:**
August 2002

JOAN WEISS v. COOPER HOSPITAL / UNIVERSITY MEDICAL CENTER

Complainant, a registered nurse, filed a verified complaint alleging that Respondent failed to provide her with reasonable accommodation for her disability (fibromyalgia), subjected her to differential treatment and unlawfully terminated her employment based on her disability. Complainant alleged that Respondent refused to transfer her to an available nursing position which did not require heavy lifting, and terminated her because she could no longer physically perform the lifting functions of her floor nursing assignment. After a hearing on the merits, the ALJ dismissed the complaint, concluding that Respondent had legitimate non-discriminatory reasons for selecting other candidates for available transfer positions. Furthermore, according to the ALJ, Respondent provided Complainant with sufficient accommodations for her disability by affording her several leaves of absence and

modifying her schedule for a two week period.

The Director rejected the ALJ's conclusion and determined that Respondent violated the LAD. The Director found that Respondent failed to meet its burden of demonstrating that it would have been an undue hardship to transfer Complainant to at least one of two specific nursing positions which were available during the relevant time period, and for which she was qualified. The Director also concluded that Respondent presented no evidence that it offered or considered alternative accommodations designed to enable Complainant to return to work. Accordingly, the Director reversed the ALJ's dismissal of the complaint, and awarded Complainant back pay with interest, emotional distress damages, and assessed a statutory penalty. Respondent appealed and the Appellate Division affirmed the Director's decision.

DCR Docket No.:
ED08HB-39766**OAL Docket No.:**
CRT 8661-00**D.O. Issued:**
October 2002**CLARENCE HAYES v. EASTERN RENT-A-CAR, INC., A/K/A ECONO-CAR OF JERSEY**

Complainant filed a verified complaint with the Division alleging that Respondent refused to lease a vehicle to him because of his disability (blindness), in violation of the LAD. Complainant has been regarded as legally blind for 13 years and utilizes the assistance of a guide dog. Respondent, a car rental establishment, had an unwritten policy of only leasing vehicles to customers who produce a driver's license and a credit card in the same name. Complainant sought to lease a vehicle and possessed a VISA credit card, but no driver's license. He admitted that he had no licensed driver with him at the time he sought to reserve the vehicle. Complainant stated that he sought to designate his girlfriend's father as the driver. Respondent advised Complainant that it would only rent to someone who possessed a valid license.

The ALJ found that there was sufficient proof that Respondent's refusal to rent a vehicle to Complainant was based on the fact that he did

not possess a driver's license and failed to appear with a licensed driver, and that Respondent would impose that requirement on any member of the general public, not just people with disabilities.

The Director concurred, rejecting Complainant's assertion that Respondent refusal's to contract violated the LAD. The Director determined that Respondent was not legally obligated to enter into a contract with Complainant alone to lease him a vehicle that was intended to be driven by a third party, because such a transaction was not offered to the general public. N.J.A.C. 13:13-4.13. The Director adopted the ALJ's finding that Respondent was obligated under the LAD to provide a reasonable accommodation for leasing a vehicle. However, because Complainant left the establishment abruptly he did not give Respondent the opportunity to offer him a reasonable accommodation.

DCR Docket No.:
PH06HB-02565**OAL Docket No.:**
CRT 101-23-00**D.O. Issued:**
December 2002